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Policy issues

Follow-up to and implementation of the outcomes of United Nations summits, in particular the United Nations Conference on Sustainable Development, and major intergovernmental meetings of relevance to the United Nations Environment Assembly

United Nations Environment Programme access-to-information policy

Note by the secretariat

1. The United Nations Environment Programme (UNEP) access-to-information policy, established by the Executive Director in accordance with paragraph 17 of Governing Council decision 27/2, is reproduced in the annex to the present note, without formal editing. The next year will represent a pilot phase for applying the policy. During the period, consultations will be held within the UNEP secretariat with a view to sharing experiences and discussing ways to refine the policy, as well as with member States and relevant stakeholders in order to seek their views and receive relevant information based on their own experiences relating to similar policies elsewhere. As indicated in the policy, it will be reviewed within one year from the date of its establishment. On the basis of the review, the policy may be updated or revised, as necessary. It is intended that a final version of the policy will be issued by the end of June 2015.

2. The policy will apply to the information in the custody of the UNEP secretariat. Certain information generated by or held in the custody of the secretariat of a given multilateral environmental agreement relating to the operation of the agreement may be considered under the authority of the respective parties and therefore outside the scope of the policy or the disclosure of information may require the consent of the parties concerned. In this context, the policy may be implemented by the secretariats of the relevant multilateral environmental agreements, as appropriate. Where the policy may not apply to certain types of information, or where guidance from the governing body or its bureau might be necessary in the application of the policy, those secretariats are expected to advise the Executive Director accordingly.

* UNEP/EA.1/1.

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Annex

UNEP Access-to-Information Policy

6 June 2014

1. The Executive Director hereby establishes the United Nations Environment Programme (UNEP) Access-to-Information Policy (hereinafter referred to as the "Policy"), in accordance with paragraph 17 of Governing Council decision 27/2 of 27 February 2013.[1]

Section I. Statement of the Policy

2. UNEP recognizes that it is critically important to disseminate and make accessible the information concerning its work or information generated though its programme as widely as possible. UNEP also recognizes that transparency, accountability, and openness can become a catalyst for achieving a greater impact. In particular in the context of Principle 10 of the Rio Declaration on Environment and Development, it is of fundamental importance to make available relevant information to stakeholders and the public in general.

3. At the same time, UNEP has an obligation to protect the confidentiality of certain information. The present Policy endeavours to strike an appropriate balance between the need to grant the public maximum access to information in the UNEP's possession, and UNEP's obligation to respect the confidentiality of information regarding its Member States, partners, employees and other parties.[2]

4. The Policy will be reviewed within one year from the date of its establishment by the Executive Director.

Section II. Public access to information

5. The Policy is guided by openness, with the underlying presumption that UNEP allows access to any information in its possession that is not on the list of exceptions set out in Section III below. Primarily, information will be made accessible, in the available language or languages, on UNEP public website – www.unep.org.

[1] The Governing Council, in paragraph 17 of its decision 27/2, decided to enhance transparency and openness in its work and in this regard requested the Executive Director to establish a written access-to-information policy.

[2] This approach is consistent with the Secretary-General's bulletin on information sensitivity, classification and handling (ST/SGB/2007/6), which states that the work of the United Nations should be open and transparent, except insofar as the nature of information concerned is deemed confidential. The Secretary-General's bulletin is available at https://archives.un.org/sites/archives.un.org/files/ST_SGB_2007_6_eng.pdf.

6. The following is a non-exhaustive list of documents that will be made available to the public on UNEP public website:

(a) UNEP annual reports;

(b) Final form of UNEP environmental assessment reports;

(c) UNEP publications, documents and information material, including photos and videos, as defined in UNEP Publishing Policy;[3]

(d) UNEP Biennial Programmes of Work and related budgets approved by UNEP Governing Bodies;

(e) UNEP Audit Reports;

(f) UNEP Programme and Project Performance Reports;

(g) UNEP Evaluation Reports;

(h) Official documents for UNEP governing body;[4]

(i) Information on UNEP's projects, national data and reports available through the UNEP- Live website (http://www.unep.org/uneplive).

7. With regard to UNEP's projects, where relevant to the projects concerned and within the framework and available resources of such projects, UNEP will make the following information available in a timely manner, in a place accessible to key stakeholders, including project affected groups and civil society organizations, in a form and language understandable to them:

(a) Draft environmental and social impact assessments;

(b) Documentation of the consultation process;

(c) Draft mitigation plan.

Section III. Exceptions

8. UNEP does not provide access to information whose disclosure could, in UNEP's opinion, cause harm to specific parties or interests. Accordingly, UNEP does not provide access to documents that contain or refer to the information listed in paragraphs 9-15.

9. Information received from or sent to third parties, under an expectation of confidentiality. UNEP does not provide access to financial, business, proprietary, or other non-public information that it receives in, or with the expectation that it will be treated in, confidence. UNEP does not grant access to information provided to it by a Member State or a third party, on the understanding of confidentiality, without the express permission of that Member State or third party. This includes information, data, reports and analysis, deliberations, and any other work product generated as a result

[3] UNEP expects users to comply with the conditions of use set out in the disclaimers included in all UNEP publications made available to the public.

[4] Documents produced by the UNEP secretariat for general distribution. Documents or proposals under deliberation by Member States remain in the custody of Member States concerned and under their control, and as such, those deliberative documents or proposals are not considered official documents, unless the Member States concerned request the secretariat to publish them as official documents.

of, or in response to, the confidential information received from a Member State or third party under an expectation of privacy. Material held by UNEP in which other parties hold the copyright may be made available for review, but copying or distributing such material is limited to respect the rights of the copyright holder.

10. Information whose disclosure is likely to endanger the safety or security of any individual, violates his or her rights, or invades his or her privacy. In particular, UNEP does not provide access to:

(a) Information whose disclosure would, or would likely compromise the security of UNEP staff and their families, consultants, contractors, other individuals, and UNEP assets;

(b) Information about logistical and transport arrangements related to staff travel schedules, UNEP's shipments of assets and documents and the shipment of staff's and consultants' personal effects;

(c) Information whose disclosure would, or would likely endanger the life, or safety of any individual, or the environment;

(d) Personal information relating to staff and consultants whose disclosure would, or would likely compromise the rights and legitimate privacy interests of the person concerned. This includes, among others, terms of employment, performance evaluations, personal medical information, information relating to staff appointment and selection process, and personal communications.

11. Information whose disclosure is likely to endanger the security of Member States or prejudice the security or proper conduct of any operation or activity of UNEP. UNEP does not provide access to any information that if disclosed would or would likely prejudice an investigation or the administration of justice or violate the applicable law. This includes privileged information (e.g. legal advice and correspondence with legal advisers), and information that, if disclosed, might prejudice an investigation, legal or regulatory proceedings, subject UNEP to an undue risk in any contested matter (e.g. litigation or arbitration), subject UNEP to unauthorized access to its information technology systems, or aid the requester(s) or any other third party in impersonating UN personnel for fraudulent purposes.

12. Information covered by legal privilege or related to access to individual investigation cases. Requests for confidentiality by complainant or witnesses will be honoured to the extent possible within the legitimate needs of the investigation.

13. Information on UNEP's own internal deliberations, communications and UNEP deliberations with Member States or other entities with which UNEP cooperates. UNEP does not provide access to information whose disclosure would, or would likely frustrate the success of a policy or deliberative process; seriously prejudice the work of UNEP; undermine the integrity of UNEP's decision-making process; or inhibit the free and frank provision of advice and exchange of views. This includes, among others, internal inter-office or intra-office documents, emails, drafts and other relevant correspondence if the record contains:

(a) An opinion, advice, report or recommendation;

(b) An account of a consultation, discussion or deliberation that has occurred, including, but not limited to, e-mails, notes, letters, memoranda, and draft documents or any other document prepared during the course of its own internal deliberations and deliberations with Member States or other entities with which UNEP cooperates.

14. Commercial information where disclosure would harm either the financial interests of UNEP or those of third parties involved. UNEP does not provide access to financial, commercial, scientific or technical information that may, in UNEP's sole opinion or as a result of a confidentiality restriction, if disclosed:

(a) Cause harm to UNEP or a third party's commercial and financial interests;

(b) Put a third party at disadvantage in contractual or other negotiations;

(c) Prejudice a third party in commercial competition.

15. Information which, if disclosed, in UNEP's view would seriously undermine the policy dialogue with Member States or other partners. UNEP does not provide access to any documents, memoranda, or other communications which are exchanged with Member States, with other organizations and agencies, where these relate to the exchange of ideas between these groups, or to the deliberative or decision-making process of UNEP, its Member States, or other organizations, agencies or entities with whom it cooperates.

16. UNEP reserves the right, under extraordinary circumstances (for instance when the life or security of a staff member is under imminent threat), to disclose certain information covered in the list of exceptions set out in the paragraphs above, if UNEP determines that the overall benefits of such disclosure outweigh the potential harm to the interests protected by the exceptions, or to restrict access to information that it normally discloses if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure. The disclosure of information provided to UNEP by a Government or a third party in confidence requires the written consent of the Government or the third party concerned. This right may be exercised only with the approval of the Executive Director.

Section IV. Request for information

17. Information that is not available on UNEP public website may be made available upon request. For UNEP's internal tracking purposes, such requests should quote the following language: "Under UNEP's Access-to-Information Policy, I am requesting information on....". The request should be directed to:

Access-to-Information Desk
Division of Communications and Public Information
United Nations Environment Programme
Address: P.O. Box 30552, Nairobi 00100, Kenya
Phone: +254 20 7621234
Email: unepinfo@unep.org

Information requests may be handled directly by the Access-to-Information Desk, or subsequently by the head of the relevant Division or office.

18. Regarding request for information that may be considered an exception under Section III of the Policy, the officer concerned should seek guidance from Senior Legal Officer/Office for Operations and Corporate Services on handling of such requests.

19. All Information requests should be handled promptly. The requestor should expect to receive an acknowledgement of receipt of the request within ten (10) working days. Depending on the complexity of the request, UNEP will endeavour to handle all requests within sixty (60) calendar days after the acknowledgment of receipt is sent. For information requests that involve the reproduction of material, UNEP may charge a fee for material and labor cost, which will be communicated to the requestor and will need to be paid in advance.

20. UNEP may partially or wholly deny a request, as follows:

(a) In accordance with the limitations set out or referred to in this Policy;

(b) If the request is deemed by UNEP to be an excessive demand upon UNEP's resources; or

(c) If the request, in the judgment of UNEP, appears to be frivolous. In such case, UNEP's response may only be signed by a Division Director.

Section V. Review and appeal process

21. If a request of information is denied, the requestor may seek the review of the decision by addressing a letter to UNEP Access to Information Panel (hereinafter the "Panel"), providing reasons for the appeal. Every request for appeals will be acknowledged. The Panel will review the denial of requests to disclose a document or portion of a document to a member of the public.

22. If an agreeable solution is not forthcoming within the Panel, the Panel will make recommendations to the Executive Director on the outcome that would be most consistent with the application of the Policy. The Executive Director will have the authority to take a final decision concerning the request for information in question.

23. That review should normally be completed within sixty (60) working days of being requested. The outcome of the review will be communicated to the requestor and there will be no requirement for providing a detailed explanation of the outcome of the review.

Section VI. Access-to-Information Panel

24. The Panel's mandate is to assist the Executive Director in monitoring the implementation of the Policy and to consider and review appeals relating to a request for information.

25. The Panel's primary function is to review appeals submitted to it and to determine whether the Policy has been properly applied. Determinations shall be guided by the principle of seeking amicable solutions in the context of the request and the parties who may be affected by the release of the information.

26. The Panel may also develop, as appropriate, more detailed mechanisms and procedures for the review of denied requests, review the implementation of the Policy and provide recommendations on changes which should be made, as well as re-examine the Policy on a regular basis in light of operational and other changes within UNEP.

27. The Panel consists of seven UNEP professional staff members, all appointed by the Executive Director. The Panel may deliberate with a quorum of four members. The Chair of the Panel will be selected from amongst, and by, the Panel members. Members will serve for a term of two years, which may be extended for another term at the discretion of the Executive Director.

28. Members of the Panel will be selected on the basis of the following criteria: in-depth knowledge and thorough understanding of UNEP policies, structures, programmes and operations at Headquarters, Regional and Sub-regional or Country Office levels; thorough knowledge of, and familiarity with, information disclosure and access to information policies; and proven ability to work with UNEP partners.

29. The Panel will meet virtually or in situ whenever there is an appeal for review. The Panel may also meet to consider policy matters related to the Policy and its application, as necessary.

30. Division of Communications and Public Information will serve as the Secretariat to the Panel.

(*Signed*) Achim **Steiner**
Executive Director